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The Solicitors' Journal

[ESTABLISHED 1857.] [REGISTERED AS A NEWSPAPER.]

VOL. LXXX. No. 38 [PAGES 725 TO 740]. **Saturday, September 19, 1936.** PUBLISHED WEEKLY. PRICE ONE SHILLING

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The Solicitors' Journal

VOL. LXXX. **Saturday, September 19, 1936.** No. 38

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Current Topics.

Title to Remembrance.

Among the papers read at the British Association's meeting last week, not the least interesting was that by Sir Richard Livingstone on the imperfections of our educational system. In support of his thesis, and as showing the lack of general cultural knowledge, he quoted the result of a test paper set by an English officer during the war to ascertain what his men knew about various prominent people, past and present, and how they would appraise those personalities. The result was disappointing, for at the head of the list, with men like Michael Angelo and Milton nowhere, was placed Charles Peace, the perpetrator of a horrible murder in 1879, thereby gaining at the time an unenviable notoriety. As he was defended by Frank Lockwood at the request of Mr. Justice Lopes, the presiding judge, he naturally finds mention in the memoir of Lockwood, written with his accustomed felicity by Augustine Birrell, who laid it down as axiomatic that unless a murderer is of sufficient disrepute to find a place in the Dictionary of National Biography, he stands a poor chance of what is called immortality, and added that Peace's infamy was not sufficiently picturesque to ensure this result, although, in view of the majority of those taking part in the test paper referred to, it might seem that Birrell's prophecy has not been fulfilled. But while few would imitate the soldiers in placing Charles Peace at the top of a list of notable men, he is at least ensured of remembrance by reason of the fact that he was defended by Lockwood, to whom he proffered a singular "fee" in recognition of his forensic labours. We are told that after being sentenced to death, Peace sent from his cell a special message to Lockwood thanking him for his exertions, and at the same time begging his acceptance of a ring which accompanied the message. This ring, it appears, was a villainous looking thing, made of the basest of metals, and bearing a suspicious resemblance to what is known as a knuckle-duster. Lockwood professed himself highly gratified, saying that he had never had anything so handsome given him before, but alas! Mrs. Lockwood was not equally pleased, for she peremptorily refused to give it shelter even for a night. Later, when Lockwood was ironically complimented on his defence of "Peace with Honour," he smilingly accepted the compliment, but added that at any rate it was not "Peace at any price," for his pleading was without pecuniary reward. While we smile at this playful badinage, we realise once again the readiness with which great advocates have, time and time again, placed their services at the disposal of those who have been unable to offer any remuneration in return; and yet we frequently hear of the mercenariness of the legal profession!

Road Planning.

The meeting of the British Association at Blackpool has also been productive of interesting matter bearing upon the problem of road safety. On Monday, Mr. E. H. Fryer read a paper entitled: "The Application of Science to the Solution of Road Users' Dangers and Difficulties," in which it was urged that an ideal road system would include treble carriageways in suitable circumstances of which the speaker gave instances. The central carriageway would carry the traffic outwards in the earlier part of the day and in the reverse direction only at night, the change-over being a matter for the police to decide. Intermediate and slow traffic could use the outer carriageways in either directions. Good roads should not be provided for short lengths. They must, it was said, be continuous, and something more scientific was required than the present traffic lights, staggered cross-roads, roundabouts, and other palliatives. Entering traffic should turn left and then, having weaved with the main road by a right turn, take the other side of a dual or treble carriageway. To facilitate this, the carriageways must be wide enough to accommodate the largest vehicles with trailers. Other features laid down as essentials by the speaker were super elevation at curves designed for speeds of from 20 to 40 miles an hour and non-skid surfaces for at least 50 yards before all crossings. Another suggestion was that the height of the first floor level of buildings should be so defined as to enable an upper public footway to be provided, giving access to the top decks of omnibuses in recessed bays.

Car Design and Road Safety.

The same speaker made comments on present-day motor design from the aspect of safety on the roads. Visibility of the road ahead and astern from the car-driver's seat was not, he said, so good as it used to be. Window reflections, bad ventilation and draughts were cited as sources of trouble in the many recent types of cars, and it was thought that there was a tendency to reduce the centre of gravity of cars to the detriment of many other necessary features. In the course of a discussion which followed the reading of the paper, Wing-Commander Cave-Brown Cave urged that speedometers ought to be more visible, preferably in the line of sight of the driver and, perhaps, on the radiator cap. He complained of the inefficiency of windscreen wiping arrangements which he described as terribly dangerous at night against oncoming beam lights. Side pillars in many cars also obstructed the driver's view. Brake design was another matter which he thought needed attention, the present types being easy to get out of adjustment. On the subject of the roads themselves, the same speaker referred to a suggestion he had received to the effect that the construction of totally new roads was

greatly preferable to the widening of old roads which damaged villages and countrysides and led, at most, to only temporary improvement. Mr. C. La M. Gosselin, former President of the Commercial Motor Users' Association, said that roads lacked continuity of character and were traps by day and worse traps by night. He thought that the variety of speeds allowed to different classes of vehicles was a main cause of road accidents and recommended a uniform speed. The controls of all motor vehicles should he urged, moreover, be made as uniform as possible. He advocated the segregation of different kinds of road traffic and the placing of the walker and cyclist, who should be compelled to carry a rear light, on separate tracks.

The Driver's Responsibility.

The speaker then went on to deal with other matters which may be shortly indicated. People on the roads, he said, whatever their capacity, must be expected to use their brains and be held responsible if they did not or could not. The motoring associations, through their road scouts, ought to check bad driving on the roads whenever they saw it. Motoring offences should be dealt with by special courts, manned by motorists (and others, of course), and only the worst cases taken to the police courts. The responsibility of the driver also formed the subject-matter of some very interesting remarks on the part of Dr. J. W. Lanchester, who spoke of the proper mental attitude when approaching a fork in the road, when overtaking a big vehicle that obstructed the forward view, and when crossing a main road by a junction the two arms of which were not in line, and emphasised the importance of acquiring the bias in favour of safety every time. The speaker dissented from the view that all physical disability should unconditionally bar a man from driving and observed that it was the road hog, rather than the one-eyed or one-armed driver, that should be punished. He complained that magistrates often failed in their duty in cases of bad driving and too often accepted trivial excuses. Drivers' eyes should be on the road, not on car gadgets, and excessive speed should be checked by audible signals.

Alcohol and the Motorist.

Another matter brought before the British Association was the effect of alcohol upon the driver of a motor car. Dr. H. M. Vernon referred to the fact that a committee of the British Association had investigated the subject of the request of the Ministry of Transport and given the considered opinion that the available evidence indicated that even a moderate quantity of alcohol, such as that contained in a "large" whisky, had an adverse effect on drivers, since it tended to diminish attention and control, and reduced the accuracy and rapidity of the highly skilled muscular movements required in the driving of a motor vehicle. The evidence upon which the foregoing conclusions were based was not, the speaker explained, obtained by direct experiment. He then referred to further tests which, thanks to the employment of a motor driving apparatus consisting of a dummy car with the usual controls and a screen on which was projected a moving picture of a road, had since been made under conditions approximating closely to road driving. As the result of tests made on twenty persons it was found that a quarter of a pint of mild beer gave no appreciable effect on the driving, but when a driver drank two to four ounces of whisky it was found that he usually quickened his speed by an average of 6 per cent., and at the same time 12 per cent. more errors were made in keeping to the track. Different persons varied considerably in their reactions, and in one-third of the whisky tests the driving speed was accelerated 10 to 25 per cent. Most of those tested, it was stated, were quite unconscious that they had accelerated at all, and it followed, therefore, that they would have been distinctly more likely to incur an accident when forced to draw up quickly to avoid running down a pedestrian or other obstruction. The speaker urged that these experiments strongly suggested that every motor vehicle ought to be provided compulsorily with a speedometer. In order to avoid the adverse effects of alcohol it was most desirable that motorists should not drink any alcohol at all before driving. Medical tests indicated that all persons, without exception, were definitely under the influence of alcohol when they had as much as two parts in a thousand in their blood, and about half of them were "under the influence" when they had even one part in a thousand. With the first of these conclusions we agree. With regard to the others it appears that notwithstanding the ingenuity of the apparatus the conditions were necessarily somewhat different from those encountered on the open road in ordinary life.

Tithe Act, 1936: Appointed Day.

We have in these columns dwelt at some length on the provisions of the Tithe Act, 1936, and the considerations which have led to its formulation. (See 80 Sol. J. 173, 174, and the leading article at 80 Sol. J. 376.) It will, therefore, be unnecessary to treat of the matter further here, but it may not be out of place to remind readers that the 2nd October next is named in the Act as the "appointed day" for the extinguishment of tithe rent-charge "and," to quote s. 1, "accordingly as from that day the land out of which any tithe rent-charge issued immediately before that day shall be absolutely discharged and freed therefrom." Moreover, a redemption annuity "shall be charged in respect of the land out of which a tithe rent-charge extinguished by this Act issued immediately before the appointed day, for the use of His Majesty for the period commencing on the appointed day and ending on the day preceding the sixtieth anniversary thereof" (*ibid.*, s. 3 (1)). Interest on the stock issued for compensation in respect of a tithe rent-charge is to begin to accrue on 1st October, 1936. Particulars required under s. 5 of owners in respect of tithe rent-charge extinguished by the Act for the Tithe Redemption Commission set up by s. 4, must be furnished not later than 31st October, 1936. In this connection attention should be drawn to the Tithe Rentcharge (Extinguishment) Rules, 1936 (S.R. & O. 1936, No. 775), which were made by the Minister of Agriculture on 31st July, and prescribe the forms in which these particulars must be transmitted to the Commission. The Rules are published by H.M. Stationery Office at 2d. Prints of Forms I and II referred to in the Schedule to the Rules are obtainable free of charge on application to the Tithe Redemption Commission, Eagle House, 90–96, Cannon Street, E.C.4. The determination by the Commission of the amount of each annuity and the preparation of the register are to be effected "as soon as may be after the appointed day" (s. 9 (1)). The transfer of the management of the annuities from the Commission to the Commissioners of Inland Revenue is postponed for at least seven years from the appointed day. Practitioners should note that under s. 13 (8) of the Act a redemption annuity is an incumbrance for the purposes of the Law of Property Act, 1925, s. 183. An important notice which we have received from the Tithe Redemption Commission appears at p. 739 of this issue.

The Law Society's Provincial Meeting.

The Fifty-second Provincial Meeting of The Law Society is to be held at The University College, Highfields, Nottingham, next Tuesday and Wednesday, the 22nd and 23rd September, and the course of procedure to be adopted at the meeting, as settled by the Council of The Law Society, appears at p. 739 of this issue. A full report of the proceedings, together with the various papers read at the meeting, will be published in successive issues of The Solicitors' Journal, commencing with the special Law Society Number of the 26th September. That issue will also contain a photogravure portrait of the President of The Law Society, Mr. Hubert Arthur Dowson.

Costs.

NOTES ON DISBURSEMENTS.

"We hold, therefore, that for the purpose of taxation under the Solicitors Act, 'disbursements' mean actual payments before the delivery of the bill, and that any sums claimed in the bill and not paid before its delivery must be disallowed."—[Extract from the judgment of the Court of Appeal in *Sadd* v. *Griffin* [1908] 2 K.B. 510.]

THE term "charges and disbursements" occurs with frequency, and we may pause here with advantage to consider the precise meaning of the words, and the statutory provisions relating to them.

It will be remembered that solicitors' costs may, broadly, be divided into two main classes, namely, "party and party" costs and "solicitor and client" costs. The remuneration to which a solicitor is entitled, whether in a "party and party" bill or a "solicitor and client" bill, is limited by statutory provisions, or provisions having statutory force. The word "charges" is not difficult to construe, and no trouble arises as to this. Nor, for that matter, is any difficulty likely to arise in connection with the precise meaning of the word "disbursements" in its relation to "party and party" costs, for as was pointed out by the Master of the Rolls in the case of *Davis* v. *Earl of Dysart* (1855), 21 Beav. 124, a party and party bill of costs is a mere statement of facts, a claim by one party against another, and can be added to or amended as occasion arises.

The word "disbursements," however, assumes a greater significance when applied to "solicitor and client" costs, and the difficulties that have arisen in the past have been mainly concerned, in the first place, with the distinction between disbursements that should properly appear in a solicitor's bill of costs, and disbursements that should appear in a cash statement. The point is not unimportant at times.

The second difficulty, and it is the one we have in mind at the moment, has been to decide whether disbursements, so called, that have not actually been paid but are properly incurred, are strictly recoverable by the solicitor from his client.

The question was raised in an acute form in the case of *Sadd* v. *Griffin*, *supra*, where counsel's fees that had actually been incurred, but which had not been paid by the solicitor, were included in his bill of costs. The client failed to pay the bill and the solicitor sued for the amount thereof, and the client eventually obtained an order to tax. The taxing master adjourned the taxation in order to give the solicitor an opportunity of paying the counsel's fees, which he did, and they were accordingly allowed by the taxing master whose ruling was upheld by the learned judge. On appeal to the Court of Appeal, however, the taxing master was held to have acted on a wrong principle, and the upshot was that these counsel's fees were disallowed and the solicitor, no doubt, had to bear them himself.

As a result of this decision sub-r. 29 (*a*) of Ord. 65, r. 27, was passed. This sub-rule provided, briefly, that a solicitor may include in his bill any unpaid disbursements, if one may so describe the items, providing he shows them separately in his bill of costs, and specifically states that they have not been paid.

His difficulties are not, however, at an end, for if the bill is made the subject of taxation, then he must pay these unpaid items which have been specifically stated in his bill, before they can be allowed by the taxing master. The requirements of the sub-rule in this respect are capable of division into two parts. Thus, if proceedings for taxation of the bill are commenced by the client or a third party, the unpaid items specifically stated in the bill may be allowed by the taxing master, providing they are paid before the commencement of the *taxation*. On the other hand if the taxation of the costs is commenced by the solicitor, then the items must be paid before the commencement of the *proceedings*.

Thus, if the solicitor applies to have his bill taxed, then he must pay the outstanding items before issuing his summons, or otherwise commencing the proceedings. If, however, he sues for the amount of the bill and obtains the usual order for judgment under Ord. XIV, which is normally made for such a sum as the taxing master may find to be due, then he may pay the outstanding items at any time before the actual taxation commences, since the order to tax is deemed to be a proceeding commenced by the client, see *Smith* v. *Howes* [1922] 1 K.B. 590.

The point has been brought into prominence again by the decision in the recent case reported in our issue of the 21st March last. In that case some £90 of counsel's fees were disallowed on the ground that they had not been paid before the commencement of the taxation. The solicitor there raised the somewhat novel point that sub-r. 29 (*a*) had no application now because it was framed under the Solicitors Act of 1843 which had been repealed by the Solicitors Act, 1932.

It must be borne in mind, however. as was pointed out in the Court of Appeal, that the Solicitors Act, 1932, defines "costs" as including fees, charges, disbursements, expenses and remuneration: see s. 81 (1). Consequently, in an action brought for recovery of costs due to the solicitor under s. 65 of the 1932 Act, there is included a claim for disbursements due, and since counsel's fees are in the nature of gratuities, they can only be *due* if they are in fact *paid* at the time the bill is delivered. The position is thus precisely the same as it was before the 1932 Act, so far as this point is concerned.

We shall consider this matter further in our next article.

Company Law and Practice.

Votes of Directors on Matters in which they have a Personal Interest.

IN the absence of specific authority in the articles of association of a company, directors cannot enter into contracts with the company in which they have a personal interest unless the company in general meeting sanctions the transaction. Usually, however, the articles do permit a director to enter into contracts and have dealings with the company provided he discloses the nature of his interest to the board of directors; and there is, of course, the independent statutory provision for disclosure contained in s. 149 of the Companies Act, 1929, breach of which exposes a director to liability to a fine. But even where the provisions of the articles enable a director to have a personal interest in contracts with the company they usually prohibit him from voting as a director in regard to the contract or dealing in which he is interested and provide that he shall not be reckoned in estimating a quorum at the board meeting at which the matter is under consideration; sometimes, however, this is qualified so as to enable a director to vote in respect of an agreement to give him indemnity or security for liabilities he has incurred or is about to incur on the company's behalf, or on a resolution to allot him shares or debentures.

The disregard of such a prohibition on voting will, of course, invalidate any resolution which depended for its passing upon the vote of the interested director. In *Victors Limited* v. *Lingard* [1927] 1 Ch. 323, the company's articles provided that no director should vote as a director in regard to any contract, arrangement or dealing in which he was interested. The company had an overdraft from the bank and this the directors had personally guaranteed. Subsequently, as a result of negotiations with the bank, the directors passed a resolution that debentures of the company be issued to the

bank as security for the overdraft, and accordingly debentures were issued. It was held by Romer, J., that the directors were "interested" in the arrangement with the bank for the issue of the debentures, for clearly the issue of the debentures was of indirect benefit to the directors as guarantors of the overdraft; consequently the resolution authorising the issue was a nullity as it depended for its validity upon the votes of directors who were, by the articles, precluded from voting upon such a matter.

Quite apart from express provisions in the articles which exclude an interested director from being reckoned in counting a quorum, it appears from the decision in *In re Greymouth Point Elizabeth Railway and Coal Company Limited* [1904] 1 Ch. 32, that a director prohibited from voting cannot be taken into account in estimating whether a quorum of directors is present. The articles there prohibited directors from voting on matters in which they had an interest, and fixed the quorum for directors' meetings at two. At a board meeting at which three directors were present it was resolved that debentures should be issued to two of them for advances made to the company. Irrespective of the question as to the validity of the voting, Farwell, J., held that there was no properly constituted quorum, for "quorum" meant a quorum competent to transact and vote on the business before the board, and the two directors were clearly not competent to vote on business in which they had a personal interest.

Attempts to sidetrack such restrictions on voting and on the personnel of a quorum of directors are not likely to succeed if the course adopted, though perhaps technically and *primâ facie* within the relevant provisions of the articles, involves, as a matter of substance, a breach of those provisions and is designed to do indirectly what cannot be done directly. This is illustrated by the decision in *In re North Eastern Insurance Co., Ltd.* [1919] 1 Ch. 198. There the articles in the usual way prohibited a director from voting in respect of a contract in which he was interested; and they further provided that the directors might determine the quorum necessary for the transaction of business, and that, until otherwise determined, three should be a quorum. There were four directors of the company, A, B, C and D, and at a board meeting at which all were present reference was made to advances made to the company by C and D, and a resolution was passed for the issue of a debenture for £350 to C, who did not act or vote in relation to this resolution. A second resolution was passed for the issue of a debenture for £950 to D, and in relation to this resolution D neither acted nor voted. The two debentures were expressed to rank *pari passu*, and one could not be realised without realising the other. Lawrence, J., held that the real facts were that C and D had agreed to make advances to the company upon receiving debentures as security and they were both interested in seeing that the whole of the terms relating to the advances were carried out. The two debentures really constituted one security. Consequently the issue of the debentures ought to be regarded as part of one entire transaction in which both C and D were jointly interested; hence neither could validly vote on the issue of the debenture to the other. On the authority of the *Greymouth Point Elizabeth Railway Case, supra*, the resolutions for issuing the debentures were therefore invalid.

In the *North Eastern Insurance Co. Case* there had also been a board meeting at which D was not present, at which a resolution was passed for the issue of a debenture to D as security for all moneys due from the company to D and C. C, of course, was interested and could not validly vote in favour of the resolution, but it was alleged that before the resolution as to the debenture was passed a resolution had been first passed altering the quorum of directors from three to two, so as to provide a quorum of directors competent to vote on the resolution to issue the debenture. Lawrence, J., held that the resolution reducing the quorum was invalidly passed. " . . . a resolution passed simply to alter a quorum for the purpose of enabling a resolution to be passed conferring an interest in the property of the company upon a director—for that, and no other purpose—is an attempt to do, indirectly, that which cannot be done directly. It is part of the same arrangement for the purpose of conferring an interest upon a director, and is, therefore, just as invalid in my view as the resolution conferring the interest itself would have been if the three directors had voted upon it. . . . In my opinion the vote of the interested director in favour of a resolution to alter the quorum for such a purpose really comes to the same thing as a vote by him in favour of the resolution for conferring the interest on himself."

It will be observed that the article restricting the voting powers of a director on matters in which he is interested applies only to his votes as director at board meetings, and does not affect his voting rights as a shareholder at general meetings of the company. His rights to vote as a shareholder depend upon the general principle expressed by Lord Davey in *Burland* v. *Earle* [1902] A.C. 83, at p. 94, in these words: "Unless otherwise provided by the regulations of the company, a shareholder is not debarred from voting or using his voting power to carry a resolution by the circumstance of his having a particular interest in the subject-matter of the vote." One instance of the application of that principle is to be found in the case of *North-West Transportation Company Limited* v. *Beatty*, 12 App. Cas. 589. There the directors passed a resolution authorising the purchase by the company of property from the defendant, who was himself a director. There was no power for directors to contract with the company, and consequently, in the absence of anything more, the defendant would have had no rights as against the company. But a general meeting of the company subsequently adopted the contract by a majority, the defendant possessing a voting power as shareholder which enabled him to carry the resolution. It was held by the Privy Council that the contract for the purchase of the property was binding on the company. Any defect in the contract as entered into by the directors was remedied by the resolution of the company in general meeting, and the fact of the defendant being a director did not deprive him of his right to vote, as a shareholder, in support of any resolution which he thought favourable to his own interests. The principles were thus stated by Sir Richard Baggallay in delivering the judgment of the Privy Council: "Unless some provision to the contrary is to be found in the charter or other instrument by which the company is incorporated, the resolution of a majority of the shareholders, duly convened, upon any question with which the company is legally competent to deal, is binding upon the minority, and consequently upon the company, and every shareholder has a perfect right to vote upon any such question, although he may have a personal interest in the subject-matter opposed to, or different from, the general or particular interests of the company. On the other hand, a director of a company is precluded from dealing, on behalf of the company, with himself, and from entering into engagements in which he has a personal interest conflicting, or which possibly may conflict, with the interests of those whom he is bound by fiduciary duty to protect; and this rule is as applicable to the case of one of several directors as to a managing or sole director. Any such dealing or engagement may, however, be affirmed or adopted by the company, provided such affirmance or adoption is not brought about by unfair or improper means, and is not illegal or fraudulent or oppressive towards those shareholders who opposed it." It should be noted however that directors cannot by use of their majority voting power as shareholders appropriate to themselves property which belongs to the company; this would be an oppression of the minority: see *Cook* v. *Deeks* [1916] A.C. 554.

It is of some practical importance to remember that directors who are precluded by the articles from voting at board meetings

on matters in which they are interested can validly exercise their votes as shareholders at general meetings of the company; if it were otherwise, then in the case of small private companies consisting of two or three members who are also directors, it would not be possible for any arrangement in which the directors were interested to be made between them and the company. As it is, the arrangement can be properly entered into and made binding by a resolution of the company in general meeting, at which the directors are quite in order in using the votes which they possess as shareholders.

A Conveyancer's Diary.

Jurisdiction of Court to sanction Scheme for raising Money upon Settled Land to pay Debts of Tenant for Life.

A CASE of some interest and importance regarding the jurisdiction of the court under S.L.A., 1925, s. 64, is *Re White: Popham Settled Estates* (1936), 2 All. E. Rep. 1486.

The material facts as stated in the headnote to the report are as follows: A tenant for life applied to be allowed to raise a sum by sale or mortgage of the settled land, in order to pay his debts and pay the first premium on a life policy to be assigned to the trustees, the arrangement being that the subsequent premiums should be paid during the life of the tenant for life out of the income, and that the capital sum should be reimbursed by the payment of the policy moneys on the death of the tenant for life.

The sanction of the court to this scheme was sought under s. 64 of the S.L.A., 1925. That section reads:—

"(1) Any transaction affecting or concerning the settled land, or any part thereof, or any other land (not being a transaction otherwise authorised by this Act, or by the settlement) which in the opinion of the court would be for the benefit of the settled land, or any part thereof, or the persons interested under the settlement, may, under an order of the court, be effected by a tenant for life, if it is one which could have been validly effected by an absolute owner.

"(2) In this section 'transaction' includes any sale, extinguishment of manorial incidents, grant, lease, surrender, reconveyance, release, reservation or other disposition, and any purchase or other acquisition and any covenant, contract, or option, and any application of capital money (except as hereinafter mentioned), and any compromise or other dealing, or arrangement; but does not include an application of capital money in payment for any improvement not authorised by this Act, or by the settlement; and 'effected' has the meaning appropriate to the particular transaction; and the references to land include references to restrictions and burdens affecting land."

I do not think that there is any authority which would help in considering what should have been decided in *Re White-Popham*. The only case, so far as I know, in which s. 64 of the S.L.A., 1925, was brought in question is *Re Symons* [1927] 1 Ch. 344. The facts in that case were rather complicated and, at any rate, it was held that the transaction to which the sanction of the court was sought was one which was "otherwise authorised by the Act," and so the powers conferred by s. 64 need not be invoked.

Looking at s. 64, and having regard to the commencing, and as I should have thought, the governing words "any transaction affecting or concerning settled land," it would appear to me that the transaction which the court was asked to sanction in *Re White-Popham* was not within the purview of the section. That especially would seem to be so when sub-s. (2) is examined closely. That sub-section, although not in terms expressed to be comprehensive of the extent to which sub-s. (1) is intended to operate, at least indicates the general lines upon which the section is to be construed. Certainly sub-s. (2) does not include or contemplate such a transaction as that proposed in *Re White-Popham*.

In fact, the real "transaction" in that case was not one "affecting or concerning the settled land," but was a transaction affecting money raised upon a mortgage of the settled land. Moreover, it would appear that as the section does not apply to any transaction "otherwise authorised by this Act or the settlement," it does not apply to a mortgage or sale which the tenant for life might under his powers effect.

That appears to have been the view taken by Eve, J., who held that the court had no jurisdiction to make the order, as he was of opinion that the transaction did not affect the settled land, but the money lent on mortgage or realised by a sale of the land.

However, the Court of Appeal took a different view.

Lord Wright, M.R., who delivered the judgment of the court, said, in effect, that although not for the benefit of the settled land, involving as it did, in the first instance, a diminution of it, the transaction was to be looked at as a whole, and, so regarded, it was for the benefit of persons interested under the settlement, namely, the tenant for life.

In dealing with the contention that s. 64 did not apply to any transaction "otherwise authorised by this Act or by the settlement," and therefore had no application to any sale or mortgage of the land by the tenant for life, he said: "That, in my opinion, is a misconception, because the transaction proposed, which concerns settled land, is to be looked at as a whole; and looked at as a whole, this transaction is clearly one which requires the sanction of the court."

Romer and Greene, L.JJ., concurred without delivering any judgments.

The effect of this case may be far reaching and stimulate tenants for life who are in difficulties to apply to the court in circumstances which would not formerly have been regarded as justifying it, and certainly extends the effect and operation of s. 64 beyond what has generally been regarded as the limits of it. In fact, it may now be said that hardly any bounds can be set to the operation of the section.

Of course, the Court of Appeal must be right, but I take leave to doubt whether the draftsman of the Act had in contemplation any such transaction as this when drafting s. 64. It seems to me that the whole tenour of the section points against it, although it must be admitted that, strictly, the wording of the section may be made to cover the transaction. How far this construction of the section may be stretched I cannot tell, but it seems that any transaction whatever which is for the benefit of "persons interested under the settlement" (which I take it may mean any one or more of such persons) may be authorised.

It is true that the court may be relied upon not to sanction a transaction which would greatly benefit one or more of the persons interested under the settlement to the detriment of another or others of them, but I do not believe that it was ever intended to give the court power to do so.

POLICE COURT WORK IN LONDON.

The Home Secretary has appointed a Committee to inquire into the exercise of summary jurisdiction in the Metropolitan Police Court District, including the distribution of work among the various Metropolitan Police Courts and the Juvenile Courts, and the allocation of functions to these Courts and the Petty Sessional Courts respectively, and to report what changes, if any, are required to facilitate the transaction of business and to make adequate provision for public needs, having regard to the character of the business.

The members of the Committee are, Sir Alexander Maxwell, K.B.E., C.B. (Chairman); Mr. J. E. Cecil Bigwood, J.P.; Mr. R. E. Dummett (Metropolitan Police Magistrate); Miss Margery Fry, J.P.; Mr. A. H. Lieck (Chief Clerk, Bow Street Police Court); Sir John Moylan, C.B., C.B.E. (Receiver for the Metropolitan Police District); Mr. G. T. Whiteley (Clerk to the Newington Justices).

The Secretary of the Committee is Mr. C. S. Collinge, to whom all communications should be addressed at Bow Street Police Court, W.C.2.

Landlord and Tenant Notebook.

Effect of Breach of Covenant against Alienation.

In the absence of a forfeiture, the effect of the breach of a covenant against alienation on the positions of the three or more parties concerned is not always easy to determine. In most of the cases on the subject, other considerations have been present and have played some part. Some authorities cannot readily be reconciled with earlier decisions which, not having been cited in argument, were neither judicially distinguished nor dissented from nor overruled.

The most recent case to touch the subject was *Parker* v. *Jones* [1910] 2 K.B. 32. The story here began in 1896, when a Mr. Assheton Smith let a house and some land to a Mr. Hamer on a tenancy from year to year. The lease provided for forfeiture in the event of breach by the tenant of *inter alia* a covenant not to assign or sub-let the whole or part without consent. In breach whereof Mr. Hamer, in 1899, sub-let the land to the plaintiff. Mr. Assheton Smith was not aware of what had happened and remained in ignorance till after he had accepted a surrender of the yearly tenancy in 1909. Whether he acquired the knowledge before or after the next event, which was the letting to the defendant of the whole of the premises, was not mentioned in the notes of the county court judge, who decided that the plaintiff, having constructive notice of the provisions of the head tenancy, had no title. This judgment was reversed by a Divisional Court constituted by Darling and Bucknill, JJ. Both learned judges applied the rule that a surrender by a mesne lessor cannot prejudice an undertenant. Bucknill, J., held further that there could be no forfeiture after surrender; Darling, J., that if there could, there had not been, the re-letting to the defendant not constituting a re-entry.

On the question whether an undertenant is affected by a surrender of the head lease there is happy unanimity of authority throughout the ages; but on other points there is either conflict or obscurity.

Take the standpoint of the learned county court judge. No doubt His Honour sought to apply *Patman* v. *Harland* (1881), 17 Ch. D. 353, to a covenant restricting mere alienation, not user; but by looking at the problem from a different angle, support could have been found for the ruling. In *Elliott* v. *Johnson* (1866), L.R. 2 Q.B. 120, one of the three judges based his judgment on the proposition that a tenant bound by a covenant against alienation could not grant a valid assignment. The facts were that the defendant had granted, in 1832, a fourteen-year lease of a farm. The lease forbade alienation without consent, and provided for re-entry on breach of covenant, on the one hand; on the other hand the landlord was made liable for valuation at the end of the term. The tenants, however, held over without new arrangements being made, and in 1864 assigned the whole of their property by deed to the plaintiff without obtaining a licence to assign the tenancy. The plaintiff gave notice to quit and claimed the valuation, the amount of which had been agreed by the defendant without prejudice. Mellor, J., held that the right to the valuation was a chose in action which could not be assigned, the assignment of the tenancy transferring only what was essentially inherent; Lush, J., agreed that the assignment of a parol tenancy did not pass the benefit of a special stipulation. But Shee, J., held that the ex-tenant had had no power to grant anything to anyone as against the landlord; consequently the plaintiff, who had never been recognised as tenant by the defendant, had never had any interest.

The judgment of Shee, J., does not affect sub-tenancies as between mesne tenant and sub-tenant; but apart from that, it is *primâ facie* at variance with the decision in *Paul* v. *Nurse* (1828), 8 B. & C. 486, an action for rent. The defence was that the defendant (himself an assignee) had assigned over to another party; the plaintiff replied that such assignment was without the consent required by the lease; but the defence was upheld, the court pointing out that the plaintiff should have sued for breach of covenant against alienation, for the assignment was not void.

One cannot completely reconcile these authorities. The obstacle is the view taken by Mr. Justice Shee in *Elliott* v. *Johnson*, which would apply to unauthorised alienation the principle of "*nemo dat quod non habet*." I do not think that support can be found for this application elsewhere, but I submit that if that be left out one can express the position as follows: When, as is usually the case, the (head) lease contains a proviso for re-entry on breach of covenant, the sub-tenant or assignee whose (mesne) lessor or assignor omitted to obtain the required consent, holds at the will of the (head) lessor unless and until the breach be waived. In the event of waiver, an assignee is liable on and entitled to the benefit of covenants running with the land. (Liability in such a case was illustrated by *Sillcock* v. *Farmer* (1882), 46 L.T. 404, C.A., when it was held that an unauthorised assignee or sub-tenant was bound by a proviso for re-entry on bankruptcy, etc.) An assigning tenant is bound by the covenant and is liable for damages for breach; the measure was laid down by Blackburn, J., in *Williams* v. *Earle* (1868), L.R., 3 Q.B. 739, as the damage sustained by having only the liability of an inferior person for breaches of other covenants. In *Lepla* v. *Rogers* [1893] 1 Q.B. 31, the assignor was held responsible for damage done by fire because he knew that the unauthorised assignee would use the premises for the manufacture of inflammable goods.

Coming back to *Parker* v. *Jones*, it is a little puzzling to see why Darling, J., made so much of his point that the plaintiff's originally superior landlord had not enforced his proviso for re-entry by letting to the defendant "assuming that the proviso could be enforced after acceptance of a surrender." The assumption seems unwarrantable; dead horses may have been wantonly flogged and dead snakes jumped upon, but have not been killed again by either process. But a possible field of speculation is this: could a landlord ever forfeit a tenancy without definite information of the cause of forfeiture? Where notice is necessary, it would, indeed, be difficult; but the formal notice, though now necessary in the case of a covenant against alienation contained in a lease, is not required in the case of a tenancy agreement.

Now it has been decided that summary dismissal of a servant may be legally justified by evidence of misconduct not known to the master at the time of the dismissal (*Boston Deep Sea Fishing and Ice Company* v. *Ansell* (1888), 39 Ch. D. 339, C.A.) It is, then, just possible that, if in the case dealt with Mr. Assheton Smith, instead of entering into negotiations for a surrender, had informed Mr. Hamer that his lease was forfeited pursuant to the proviso for re-entry, much trouble might have been saved; for, while no subsequent litigation is reported, it is difficult to imagine that the story came to an end with *Parker* v. *Jones*. The defeated Jones must have had something to say to Mr. Assheton Smith, who could not give him possession of what he had demised, and Mr. Assheton Smith, in turn, will have sought redress of Mr. Hamer, who had failed to deliver up what he had surrendered. It is, of course, not practical politics to suggest that a landlord should send intimation of forfeiture at frequent intervals, on the principle of "go and see what baby is doing and tell him not to." But breaches of covenant against alienation are from the nature of things often very difficult to establish (housing authorities will soon have some experience of the difficulty in question, when they have to deal with overcrowding); and I do not think that it would be bad advice to a landlord whose tenant suggests a surrender to draw his bow at a venture and demand possession on the ground of forfeiture before entering into negotiations.

Mr. Ernest William Lavington, barrister-at-law, of Gloucester Gardens, Paddington, and of New Square, Lincoln's Inn, left £3,684, with net personalty £2,530.

Our County Court Letter.

REMEDIES UNDER HIRE-PURCHASE AGREEMENTS.

In *Turner* v. *P. & C. Finance Ltd.*, recently heard at Ashby-de-la-Zouch County Court, the claim was for £20 13s. 4d. as damages for breach of contract. The plaintiff's case was that he had bought a motor-cycle, under a hire-purchase agreement, and had paid a deposit of £2 10s. The first instalment of £1 15s. was paid on the 12th May, but the cycle was removed on the 30th May, before the second instalment was due. The plaintiff's garage had been broken open, at 6.30 a.m., when the cycle was taken away on the back of a car. The police were informed, but, on returning to the garage, the plaintiff found the following notice: "This machine has been seized under an agreement which has been broken." No satisfaction was received until the police intervened, whereupon the defendants wrote apologising for their agent's mistake. A fortnight after its removal the machine was returned to a railway station. The defendants' explanation was that, although a receipt had been issued, for some reason the plaintiff had not been credited with his payment. His Honour Judge Galbraith, K.C., remarked that the claim for general damages was £15, whereas £50 would not have been unreasonable. Judgment was accordingly given for the amount claimed, with costs.

In *Dennis* v. *James*, recently heard at Warminster County Court, the claim was for damages for breach of warranty of title. The plaintiff had sold a motor car to the defendant, who gave in part exchange an Austin car, i.e., the latter was sold to the plaintiff for £40. The plaintiff re-sold the car for £50 to the United Motor Finance Corporation Ltd., acting on behalf of one Richens (the plaintiff's customer), who took it on hire-purchase by instalments amounting to £55. Richens gave the plaintiff, in part exchange, another car worth £15, and paid to the finance company £2, which they handed with another £33 to the plaintiff, who thus received his total of £50. The £40 car was then claimed by the Bristol Motor Exchange and was taken by them from Richens, who sued his original vendor (the above plaintiff) and the finance corporation, who paid into court the amount claimed, viz., £29 15s. The finance corporation then claimed from the above plaintiff the latter sum and costs, viz., £33, plus an amount for damages in respect of the non-payment by Richens of £55, the amount of his future instalments. The plaintiff's claim over against the defendant thus amounted to £64 19s. 4d. The defence was that the Bristol Motor Exchange, as true owners, had let the car on hire to one Crockett, and had assigned the right to the instalments to another finance company. The defendant had guaranteed Crockett's instalments, and, having been called upon to pay, he had reimbursed himself by taking the car, which he considered he was entitled to sell to the plaintiff. His Honour Judge Kirkhouse Jenkins gave judgment for the plaintiff, with costs.

COLLISION IN HARBOUR.

In a recent case at Bristol County Court (*South Wales and Liverpool Steamship Co. Ltd.* v. *Thomas Silvey & Co. Ltd.*) the claim and counter-claim were each for £50 as damages for improper navigation. The plaintiffs owned the "s.s. Enid," which had come through the Prince Street Bridge and was bound for a berth at the Welsh Back. At the same time the defendants' motor barge, the "Safety," was out-going, light. The mate of the "Enid" was on the look-out forward, and the master, who was aft, had sounded his whistle on seeing the mast of the "Safety," before she came round the corner. No reply was heard, and the "Enid's" engines were therefore stopped. A collision occurred, and the plaintiffs' case was that the point of impact was abreast of Redcliffe Wharf and to the south-east of the harbour. The defendants' case was that the collision occurred abreast of Crane Wharf, and to the west side of the harbour. On leaving her mooring, the "Safety" had proceeded down the harbour on her proper course (the starboard side) with only one of her two engines working. Having heard two blasts from one vessel, and two from another, the master blew one blast, and put his engine into neutral. No signal was heard from the "Enid," and she was first seen 40 or 50 feet away, cutting the corner. His Honour Judge Parsons, K.C., sitting with nautical assessors, held that the collision was due to the faulty navigation of the "Enid." Judgment was accordingly given for the defendants, on the claim and counter-claim, with costs.

Land and Estate Topics.

By J. A. MORAN.

Auction sales continue to be few and far between; but from now right up to the end of the year, the hammer promises to be very busy. Whether actual sales will be effected or not, is, of course, another matter, but there are plenty of buyers about, not only individuals who have begun to realise that in land and house property they are likely to get a good return on their capital, but syndicates that have been very active during the past twelve months. The holiday rest, too, is sure to stimulate bidding when the autumn season starts in earnest. Most probably the keenest demand will be for freehold ground rents and shop sites, but it is not at all certain that the demand for house property near London, which continues to draw many new factories and industrial establishments, will not show a marked increase.

On leaving school, as far back as 1861, Mr. C. W. Willoughby, whose death is announced, entered the newly-opened office, in Chancery Lane, of the late Mr. James Green and Mr. Henry Weatherall, who had just begun to practise as surveyors and estate agents. He had been in practice for seventy years; and right up to the end of his professional career it was his habit to walk every day from his home to the station at Merstham, and between the terminus in London and his office in Chancery Lane. The chief keynote of the character of this "Grand Old Man" of the profession was kindliness and simplicity.

The building boom shows surprising vitality. The building plans approved by the local authorities, representing towns which make up nearly half the population of the United Kingdom, were valued at £10,542,000 last month, which is slightly higher than the figure for June, and about £540,000 up on the figure for July, 1935.

A Presbyterian Church in Queen's Road, Camberwell, that cost £10,000 to build sixty-five years ago, is in the market. The owner—a woman—has declared her intention of confining negotiations to those who intend to use the property for religious purposes, and she is not particular what church organisation obtains possession of the title deeds.

There has been a lot of hubbub, of late, about missing commas in legal documents and auctioneers' catalogues; but an extra comma is known at times to have been the cause of much concern. Certainly it was to the vicar when he read in his parish magazine: "The Vicar will wear no clothes, to distinguish him from other people."

Many of us are wondering whether the taking over, by the Government, of the country's trunk roads is to be æsthetically a change for the better or for the almost inconceivably worse! Is the Minister of Transport going to make use of qualified landscape architects, now that he alone has such additional responsibility, or are the trunk roads to conform simply to engineering standards of excellence? The by-passes and arterial roads which are replacing our older ones can never be, in themselves, beautiful or even safe; but if they must be built, let them be as inoffensive as ever.

To offer a circus by auction is an experience that very seldom, if only once in a lifetime, falls to the lot of a member

of the profession. Mr. James Morgan, of the Ipswich firm of Oxborrow, Son & Morgan, is the latest to join the very select few; and he not only made a success of the job, but he presided over what proved to be a free, and very amusing, performance. All the animals from a monkey to a zebra had to go through their usual turns, and the auctioneer's remarks kept in tune with the hilarity of the proceedings. "Gentlemen," he said, when the monkey was brought in by an attendant, "I am only selling the smaller one of the two."

Just now, the choice of sites for aerodromes is a matter of much concern to many owners of rural land; and instances are known where a compulsory purchase has meant a big profit to the vendor. I know owners who want to sell their agricultural land, but prefer to await developments, and if they act on the advice of those who have studied the tendencies, and the needs, of the period, they are wise.

Following the example of other big landowners, the Earl of Devon is about to sell many of his acres. Needless to add, the heavy burden of taxation has a lot to do with it.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Estate Contracts and the General Conditions.

Sir,—In your issue of to-day's date, I observe that, in the "Conveyancer's Diary," it is stated that, as there is no provision in the General Conditions of 1925 for notices to be served by post to the last known address, it was necessary to have the notice served personally, with the result that a good deal of trouble was experienced.

I was under the impression that in such circumstances the party desiring to serve the notice would have been sufficiently protected if he had followed the procedure laid down in s. 196 of the Law of Property Act, 1925, sub-ss. (3) and (4). You will note that sub-s. (5) of this section extends its provisions to notices required to be served by any instrument affecting property, unless the contrary intention appears.

Would you be so good as to let me have your views upon the subject?

Incidentally, cl. 36 of the General Conditions of 1925 (1928 edition) enables the notice to be served on the solicitor; *vide* the concluding remarks of your contributor.

LESLIE J. WILLIAMS.

Old Jewry, E.C.2.
29th August.

[We have shown this letter to the contributor of the article in question, and the following is his reply:—

"This letter raises an interesting and rather difficult point into which there was not really space to go in the original article, which mainly discussed points concerning vacation of the register. Quite possibly sub-s. (5) of s. 196 of the Law of Property Act does admit service by post in such a case, but there is sufficient doubt about the matter to make personal service more prudent until there is a direct decision to the contrary. For sub-s. (5) refers to notices "*required*" to be served by the instruments referred to. Sub-sections (1), (2), (3) and (4) all speak of notices "*required or authorised.*" Some distinction appears to be drawn in the section between occasions where the service of notices is *mandatory* and those where it is *permissive*. Now cl. 36 (1) of the General Conditions uses the word "may." It seems to me therefore that it might easily be argued that such a notice is not "required." Moreover, sub-ss. (2), (3) and (4) all concern themselves with leases and mortgages only. The learned editors of "Wolstenholme" in their note to sub-s. (5) speak of leases and debenture trust deeds. This suggests to me that the learned editors probably thought that the word "instruments" in sub-s. (5) ought to be construed *ejusdem generis* with the documents referred to in the earlier sub-sections. It is curious that they did not mention so important a class of documents as contracts of sale, if they thought the sub-section applied to them. I am prepared to believe that both these points are in fact quite possibly incorrect. But until there is a clear decision they seem to me together to provide grounds for saying, as I did at the end of the article, that there is a flaw in the General Conditions "which deserves the attention of those whose business it is to draw up such contracts," and that there should for safety be express provision for service by post.

With regard to the point raised in the last paragraph of the letter, I am afraid I did not make myself quite clear. As a matter of fact by the time in question the purchaser had no solicitor. That being so, I still think that the National Conditions provide a suitable solution, for under them the notice can be served on the solicitor if the rescission arises out of the abstract (when, almost necessarily, a solicitor is concerned), but the resale can be without notice if the trouble is default in completion, at which date there may easily be no solicitor."—ED., *Sol. J.*]

Obituary.

SIR J. T. MOLTENO.

The Hon. Sir James Tennant Molteno, K.C., ex-Speaker of the Parliament of the Union of South Africa, died in London on Wednesday, 16th September, in his seventy-second year. He was educated at the Diocesan College at Rondebosch and Trinity College, Cambridge, and was called to the Bar by the Inner Temple in 1889. He returned to South Africa and was admitted an advocate at the Cape in 1890. He entered Parliament in the same year, and in 1908 he was elected Speaker. He was knighted in 1911.

MR. R. S. DE VERE.

Mr. Robert Stephen Vere de Vere, J.P., formerly of the Colonial Judicial Service, died in London on Tuesday, 15th September, at the age of sixty-four. He was educated at Charterhouse and Trinity College, Cambridge, and was called to the Bar by the Inner Temple in 1898. He entered the Colonial Service in 1903, and after having held various appointments he became Chief Justice of the Supreme Court of the Seychelles in 1928. He was appointed Chief Justice of Grenada in 1931, and he retired in 1935.

MR. W. H. OWEN.

Mr. William Henry Owen, Barrister-at-Law, of Parliament Street, Hull, died on Wednesday, 16th September, at the age of sixty-nine. Mr. Owen was called to the Bar by the Middle Temple in 1898, and went the North Eastern Circuit. He was the first barrister to establish his practice in Hull.

MR. A. G. LEWIS.

Mr. Arthur Griffiths Lewis, solicitor, of Billericay, died at his home at Ramsden Heath on Saturday, 5th September, at the age of fifty-six. Mr. Lewis was admitted a solicitor in 1903.

MR. H. PURSER.

Mr. Henry Purser, J.P., solicitor, of Swansea, died recently at his home at Swansea. Mr. Purser served his articles at Bromyard, and was admitted a solicitor in 1899. He was a past-president of the Swansea and Neath Incorporated Law Society.

MR. A. U. SEELEY.

Mr. Adolph Unna Seeley, solicitor, senior partner in the firm of Messrs. Seeley & Son, of South Square, Gray's Inn, died at Twickenham on Thursday, 10th September, at the age of seventy-eight. Mr. Seeley was admitted a solicitor in 1882.

To-day and Yesterday.

LEGAL CALENDAR.

14 SEPTEMBER.—The trial of Madame Laffarge at Tulle, in 1840, for the murder of her husband was one of the most dramatic cases ever heard in France. Many circumstances gave it a special interest—the young wife's aversion for her husband's attentions and her passion for another, the weird scene when the official analysts set up their furnaces and alembics at the door of the Law Courts, analysing the contents of the body in this open-air laboratory, and their failure to discover poison. A crucial point in the trial was reached on the 14th September, when a further analysis having been ordered, a report was submitted stating that arsenic was found in every part of the body. The prisoner was convicted and sentenced to penal servitude for life.

15 SEPTEMBER.—"My father soon after his return to his native country took orders, and was inducted into the living of second minster in the collegiate charge of Cupar. . . . My parents occupied the house next to the Bell Inn at the corner of the street which crosses the Eden from the Edinburgh road. In this house was I born on the 15th day of September, 1779, in the midst of a tremendous hurricane, memorable for having blown the pirate Paul Jones out of the Firth of Forth after he had landed and attacked several noblemen's houses." Such was the birth of Lord Chancellor Campbell.

16 SEPTEMBER.—On the 16th September, 1916, Mr. Justice Low sentenced Lucian Asseling at the Old Bailey to five years' penal servitude for frauds in connection with the Army Clothing Department. The prisoner fell fainting into the arms of the warders and was carried groaning from the court. In the course of his summing up, the judge said: "It has been shown in the course of this case that here we have a department responsible for the disbursement of many millions of public money conducted upon methods and principles which would infallibly land any business of a private nature in the Court of Bankruptcy."

17 SEPTEMBER.—On the 17th September, 1888, the Special Commission appointed to inquire into the charges made against the Irish leader, Parnell, in a pamphlet "Parnellism and Crime," sat for the first time at the Law Courts, under the presidency of Sir James Hannan. Day, J., and A. L. Smith, J., were the other members. Sir Charles Russell represented Parnell, and it was under his cross-examination that the forger Pigott broke down and admitted that he had written certain letters attributed to the chief of the Irish Party on which the gravest charges against him were based. That, however, did not end the commission, which sat on for five months.

18 SEPTEMBER.—On the 18th September, 1867, there occurred the historic incident of the smashing of the Manchester prison van by a body of Fenians to rescue two of their number who were being carried from the police court to the city gaol. An overwhelming body of desperate men waylaid the vehicle and the unarmed police escorting it. In the course of the affray the prisoners were released, and the constable riding in the van with the keys was shot dead. Three men were subsequently arrested and hanged for his murder.

19 SEPTEMBER.—On the 19th September, 1778, Henry Brougham, the future Lord Chancellor, was born in a house at the corner of the Cowgate, Edinburgh.

20 SEPTEMBER.—On the 20th September, 1871, Mr. Justice Norman was fatally stabbed by an Indian while entering the Town Hall at Calcutta. The man sprang at him from a doorway and stabbed him in the back and when he turned stabbed him again in the abdomen. The judge retained strength enough to throw a brick at his murderer, who was immediately arrested. The motive for the crime was private vengeance.

THE WEEK'S PERSONALITY.

Henry Brougham was just under thirty when he decided that the Scottish Bar did not offer a wide enough field for his ambition, and, like many other aspiring Scots (Wedderburn and Murray before him and Campbell after him), took the road that led him to fame and fortune in being called to the English Bar. For his advancement he relied on politics as much as advocacy, and both joined hands when his brilliant defence of Queen Caroline saved her from divorce and brought him an immense popularity. When the Whigs came into power after the accession of William IV, they could offer him nothing less than the Chancellorship. The Great Seal he held for four years, but though his party came into power soon afterwards, he never again sat on the Woolsack. Probably a fatal facility for making inconvenient enemies had much to do with his exclusion, for he could sting like a wasp. No lawyer was ever more versatile, and one admirer once said of him: "There goes Solon, Lycurgus, Demosthenes, Archimides, Sir Isaac Newton, Lord Chesterfield and a great many more in one post chaise." A less generous estimate was expressed in the observation that if he "knew a little of law, he would know a little of everything."

NOT SO DRUNK.

The hoisting of an expert with his own petard is always an amusing sport, and the motorist who, at Woking recently, was acquitted of being drunk in charge of a car, must have derived considerable satisfaction from the result of the medical tests for drunkenness. "British Constitution" and "The Leith police dismisseth us" had given him no difficulty, but both the police doctor and his own doctor acknowledged that they had failed over the test which he set them, the recital of the first two lines of "Jabberwocky." A rather similar incident occurred at the Old Bailey a little while ago, when a doctor was giving evidence about a drunkenness test which he applied, standing with the feet together and the eyes shut without swaying. The Recorder, the late Sir Ernest Wild, asked him whether he thought he could do it himself, and he said he could. He left the witness-box to give a demonstration and stood for about ten seconds, but the judge declared that he noticed a distinct sway. The jury stopped the case.

CROSSED BY THE LAW.

Not long ago one of the Law Officers of the Crown was fined 20s. at Bow-street for driving at 34 miles an hour in St. James' Park, and now I see that one of the learned judges of the Scottish Court of Session has suffered a similar penalty for leaving his car outside his house in Edinburgh without setting the brakes effectively. It is unlikely, however, that he will take this trifling annoyance as deeply to heart as did one of his predecessors, Lord Monboddo, when the administration of justice went against him. An inefficient farrier having "vetted" his favourite horse so unskilfully that it died, he brought an action against him for its value and himself pleaded his cause at great length and with much learning before his judicial brethren. They, however, found against him, and, calling them "superannuated jackasses," he never sat among them again, taking his place thenceforward at the associate's table.

Books Received.

Aids to Justinian. By JAMES BURNET, M.A. (Edin.), LL.B. (Lond.). 1936. Large Crown 8vo. pp. 43. London: Stevens & Sons, Ltd. 2s. 6d. net.

The Juridical Review. Vol. XLVIII. No. 3. September, 1936. Edinburgh: W. Green & Son, Ltd. 5s. net.

Notes of Cases.

Judicial Committee of the Privy Council.

Lovibond *v.* Grand Trunk Railway Company of Canada and Others.

Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Maugham, and Sir George Rankin. 14th May, 1936.

Ontario—Securities in Railway Company—Acquisition of by Government—Remedy of Holders—Petition of Right—Appeal to His Majesty as of Right—Conditions of—Privy Council Appeals Act of Ontario (R.S.O. 1927, c. 86), s. 1.

Consolidated appeals, the first from an order of the Court of Appeal of Ontario, dated the 28th June, 1933, dismissing the appellant's appeal from a judgment of Kerwin, J., dated the 24th February, 1933, dismissing the action brought by the appellant Lovibond against the respondents; the second from an order of the Court of Appeal of Ontario, dated the 1st November, 1934, allowing an appeal by the respondents from the order of Middleton, J., dated the 2nd June, 1934, which admitted an appeal by the appellant to His Majesty in Council from the order of the 28th June, 1933.

The issued capital stock of the respondent company consisted, *inter alia*, of certain stocks, referred to as the junior stocks, held by the appellant and others on whose behalf also he brought the action. By the Grand Trunk Railway Acquisition Act, 1919, the Minister of Railways and Canals of Canada was authorised to enter into an agreement with the Grand Trunk for the acquisition by the Government of the junior stocks of the Grand Trunk, subject to certain terms and conditions to be embodied in an agreement between the Government of Canada and the Grand Trunk. The agreement was duly made. It provided that the value, if any, of the junior stock to the holders was to be determined by a board of three arbitrators. Two of the arbitrators found that there was no value to the holders in the junior stocks of the Grand Trunk. The third arbitrator was of opinion that their value was not less than $48,000,000. By Order in Council in 1923 it was declared that the whole of the junior stocks of the Grand Trunk were the property of the Minister of Finance in trust for His Majesty, and it was directed that entries thereof in stock registers and other books of the Grand Trunk in that behalf should forthwith be made. Subsequently an amalgamation took place between the Grand Trunk and the Canadian National Railway Company whereby a new company (also respondents in the present appeals), also called the Canadian National Railway Company, came into existence. The stock of the new company was issued to the Minister of Finance in trust for His Majesty. By another Order in Council of 1923, it was provided, *inter alia*, that the Minister of Finance should be registered on the books of the new Canadian National as the holder in trust for His Majesty of the share of its stock, and that, on such registration being made, he might surrender to the new Canadian National the junior stocks of the Grand Trunk. The plaintiff accordingly brought an action on behalf of himself and the other registered holders of the junior stocks in the Grand Trunk, claiming, *inter alia*, a declaration that the transfers to the Minister of Finance of the stock of the Grand Trunk registered on the 18th January, 1923, in the names of the appellant and the other stockholders he represented were invalid, and rectification of the register accordingly. There was an alternative claim for damages by the appellant on his own behalf. The defendants were the Grand Trunk, the Canadian National Railway of Canada, and the Attorney-General of Canada. An order was subsequently made for the points of law raised by the defence to be set down for hearing before the trial of the action. They were argued before Kerwin, J., who made an order so far as material in the following terms: "And this court having directed that the motion be turned into a motion for judgment This court doth declare that the plaintiff's claim impugns the title acquired by the Crown to the preference and ordinary stocks of the Grand Trunk and cannot be maintained by action but only by petition of right as alleged in the statement of defence herein and doth order and adjudge the same accordingly And this court doth further order and adjudge that this action be and the same is hereby dismissed with costs . . ."

Lord Russell of Killowen, delivering the judgment of the Board, said that Kerwin, J., had been of opinion that, to succeed in any part of his claim, the plaintiff must establish that the Crown never obtained title to the junior stocks, and that, even though the Crown had ceased to own, or be in possession of, the property in question, the subject could only proceed by petition of right, if his claim depended on establishing the invalidity of the title which the Crown had at one time acquired. Their lordships felt no doubt that the main object of the relief which the plaintiff claimed was the recovery for himself and the other former holders of the junior stocks of the stocks which were formerly standing in their names, but which were subsequently put into the name of the Minister of Finance, and held by him in trust for the Crown. So far as the allegations in the statement of claim were concerned, the junior stocks were still in the Minister's name, and the orders claimed could only be granted by taking stock away from the Crown's trustee. Such relief could only be obtained by the subject on petition of right. The Canadian National (whether the old or the new) had no beneficial interest in the stock; if it did get it, it was only received for the purpose of terminating its existence. The only person who, if the stock still existed and the plaintiff's claim succeeded, would be deprived of the stock and any beneficial interest therein, would be the Crown. Their lordships were accordingly of opinion that the orders of Kerwin, J., and the Court of Appeal were right in so far as they operated to prevent the plaintiff from seeking by action to obtain the orders on the Grand Trunk and the Canadian National claimed. Kerwin, J.'s, order, however, went much further: it dismissed the action, which also sought relief by way of damages against the defendant companies founded on some alleged breach of duty in removing the name of the plaintiff from the stock registers. To an action of that nature the person whose name had been substituted on the registers for that of the plaintiff ought not to be joined as a defendant. The claim was not for rectification of the stock register, but merely one in the nature of a claim for damages; and to an action to enforce such a claim he was not a proper party. Their lordships saw no ground on which that claim could be prevented from proceeding against the defendant companies, notwithstanding that the plaintiff's title to any relief might ultimately turn out to depend on the invalidity of the impeached Acts of Parliament and Orders in Council. There was nothing in that fact which prevented the plaintiff from asserting by action his claim against a fellow subject for damages. Their lordships were of opinion that in that respect the action must be allowed to proceed. The short question raised by the second appeal had revealed considerable divergence of judicial opinion. It was whether the appellant was entitled as of right to appeal to His Majesty in Council from the order of the Court of Appeal of Ontario, dated 28th June, 1933; and the answer depended on whether the appeal was covered by the words "where the matter in controversy in any case exceeds the sum or value of $4,000" within the meaning of s. 1 of the Privy Council Appeals Act of Ontario. The question was now of interest in this litigation only as regarded costs, owing to the fact that special leave to appeal was granted. Their lordships, however, were of opinion that the contention of the appellant was correct, and that the plaintiff was entitled as of right to appeal to His Majesty in Council, and that both appeals should therefore be allowed.

Counsel: *Cyril Radcliffe*, K.C., *V. Evan Gray*, K.C. (of the Canadian Bar), and *Horace Douglas*, for the appellant; *W. N. Tilley*, K.C., and *F. P. Varcoe*, K.C. (both of the Canadian Bar), for the respondents.

Solicitors: *Lawrence Jones & Co.*; *Charles Russell & Co.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

House of Lords.

Victoria Spinning Co. (Rochdale) Ltd. *v.* Matthews.

Lord Atkin, Lord Russell of Killowen, and Lord Macmillan. 22nd July, 1936.

Workmen's Compensation—Accident—"Arising out of . . . His Employment."—Contravention of Regulation by Workman at Time of Accident—Peril Added Thereby—Whether Accident nevertheless "Deemed to arise out of . . . "—Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 84), s. 1 (1) and (2).

Appeal from an order of the Court of Appeal dated the 16th July, 1935, setting aside an award made by the county court judge at Rochdale on the 15th March, 1935.

The respondent workman was employed in the appellants' cotton mill as a cotton scutcher. Part of his duty included cleaning and adjusting the bars of the machine on which he worked. In December, 1934, he cleaned the bars of the machine while it was in motion, in contravention of a prohibition. The prohibition was not in writing. His foot slipped, causing him to fall forward, with the result that his hand came into contact with the beater of the machine—behind the bars—and he sustained serious and permanent injury. By s. 1 (2) of the Workmen's Compensation Act, 1925: " . . . an accident resulting in the death or serious and permanent disablement of a workman shall be deemed to arise out of and in the course of his employment, notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment . . . if such act was done by the workman for the purposes of . . . his employers' . . . business." The county court judge held that what the respondent did was so reckless and unnecessary as to take it outside the statute, and therefore that the appellants were not liable to pay compensation. The Court of Appeal reversed that decision and made an award in favour of the respondent.

Lord Russell of Killowen said that all the conditions specified in s. 1 (2) existed in the present case, and *primâ facie* it would have been expected that the accident must accordingly be deemed to have arisen out of and in the course of the workman's employment, and that the employer would be liable to pay compensation by virtue of s. 1 (1). The county court judge had, however, held otherwise, appearing to found himself on the view that certain decisions in their lordships' House (including *Thomas* v. *Ocean Coal Co. Ltd.* [1933] A.C. 100) had decided that a workman must bring himself within sub-s. (1) before he could avail himself of sub-s. (2), and that, accordingly, if the workman's act had added a peril to the employment, he could not come within sub-s. (1), and therefore sub-s. (2) could have no application to his case. With regard to *Wilsons and Clyde Coal Co., Ltd.* v. *M'Ferrin*, and *M'Aulay* v. *James Dunlop & Co., Ltd.* [1926] A.C. 377, the different treatment of the cases of the two men, M'Ferrin and M'Aulay, established, he (his lordship) thought, the proposition that if a workman at the time of the accident was doing something which was not his job at all, and in doing that job contravened a regulation or order to which those whose job it was were subject (as distinguished from the case of a workman whose job was subject to a regulation or order which he contravened while doing his job), he was not within the provisions of sub-s. (2), and the employer was not liable to pay compensation. The matter was fully discussed in the *Ocean Coal Co. Case*, *supra*, in which the workman was held to be covered by sub-s. (2). He was, like M'Ferrin, doing his job, but in doing it he had acted in contravention of a regulation. He was not like M'Aulay, who had arrogated to himself a job which was not his, and in doing it had broken a regulation. It was not, in his opinion, the law that the employer could by the defence of added peril deprive the workman of the benefit of sub-s. (2), where the only peril alleged to be added was that which followed from the contravention referred to in the sub-section. So to hold would in effect reduce the operation of the sub-section to vanishing point. He agreed with the views expressed by Slesser, L.J., in the present case—namely, (1) that the arbitrator did not decide this case on the ground that the workman had, quite apart from any question of prohibition, done something hazardous outside the scope of his employment; and (2) that, after the *Ocean Coal Co. Case*, *supra*, it was no longer open to the courts to hold that, because a "contravention" by the workman had added a peril to the employment, the accident did not arise out of and in the course of the employment, and that consequently sub-s. (2) did not apply. The appeal must be dismissed.

The other noble lords agreed.

Counsel: *Sellers*, K.C., and *B. Ormerod*, for the appellants; *Edgar Dale* and *P. Butlin*, for the respondent.

Solicitors: *Gregory, Rowcliffe & Co.*, agents for *John Taylor & Co.*, Manchester; *P. R. Christie*, agent for *J. Bright Clegg*, Rochdale.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Court of Appeal.

Grein *v.* Imperial Airways Ltd.

Greer and Greene, L.JJ., and Talbot, J. 30th April, 1st, 5th, 11th, 12th, 13th, 14th, 15th and 18th May and 13th July, 1936.

Negligence—Carriage by Air—Return Ticket from London to Antwerp—Accident—Holder killed—Whether Journey International Carriage—Limitation of Liability—Whether Duty to take care—Fatal Accidents Act, 1846 (9 & 10 Vict., c. 59)—Carriage by Air Act, 1932 (22 & 23 Geo. 5, c. 36).

Appeal from a decision of Lewis, J. (79 Sol. J. 922).

G, while travelling from Antwerp to London in an aeroplane belonging to the defendants, was killed when it was wrecked in Belgian territory. The court held that the accident was due to the pilot's negligence. G had previously travelled from London to Antwerp by one of the defendants' aeroplanes, having in London bought a return ticket in respect of the double journey. His widow having brought an action for damages under Lord Campbell's Act, Lewis, J., held that the journey was not an international carriage and that, therefore, the Carriage by Air Act, 1932, giving force to the convention signed at Warsaw on the 12th October, 1929, did not apply, limiting the damages recoverable to 125,000 francs. (At all material times Belgium was not the territory of one of the High Contracting Parties.) The defendants appealed.

Greer, L.J., delivered a dissenting judgment.

Greene, L.J., allowing the appeal, said that the Carriage by Air Act, 1932, was passed to give binding effect in this country to the convention signed at Warsaw of which the object was "the unification of certain rules relating to international carriage by air"—rules to be applied by the courts of the High Contracting Parties when contracts of international carriage by air were in question, and governing the contractual relations of the parties to the contract. Without such a code, questions of great difficulty might arise (see *Peninsular & Oriental Navigation Co.* v. *Shand*, 3 Moore, P.C. (N.S.) 272; *Cohen* v. *South Eastern Railway Co.*, 2 Ex. D. 253; and "Dicey on Conflict of Laws," 5th ed., p. 693). The convention was limited to international carriage and did not deal with the case where the carriage was to be performed within the territory of one state, the aeroplane beginning and ending the journey within that territory without coming to earth, even though in flight it passed over the territory of another state. Cases where the carriage began in the territory of a state adopting the convention and ended in one not adopting it, or *vice versa*, were not classed as international carriage. When the carriage began and ended in the territory

of the same state, but the contract provided for a descent in foreign territory, the contract was governed by the code, whether or not that foreign country was a party to the convention. International carriage was defined by art. 1 of the convention by reference to the contract itself, the rules not being concerned with journeys, flights, or parts of journeys, but with carriage performed under one contract of carriage (or in cases falling under para. (3) more than one). The contract was the unit to which attention was paid in considering whether the contract was international. Once the contract was ascertained to be one of international carriage, it mattered not that the journey was broken. Under para. (3) of art. 1, the series of contracts dealt with was treated as the unit, the parties regarding the carriage to be performed thereunder as a single operation. In para. (2) of art. 1 "the place of departure and the place of destination" were referred to in the singular, indicating that every contract of carriage had one place of departure and one place of destination, an intermediate place when the carriage might be broken not being a place of destination. The expression meant the place at which the contractual carriage began and the place at which it ended. It should be noted that by art. 31 (1) in the case of combined carriage performed partly by air and partly by any other mode of transport, the provisions of the convention applied only to the carriage by air. In art. 1 (2) "agreed stopping place" was not confined to cases of descent without any right in the passenger to break his journey, and meant any place where the machine would stop in the course of performing the contractual carriage. The fact that the carrier reserved the right to alter the stopping places in case of necessity would not affect the matter one way or the other. The contract by reference to which the place of departure and the place of destination were to be ascertained might be a contract for a single journey, a circular journey or a return journey. It had been argued that "place of destination" was not a natural expression to use with reference to the homeward end of a return journey, and that "agreed stopping place" was not a natural expression to use with regard to the outward end of such a journey, but the question was not as to the natural meaning of those expressions in the abstract, but in their context. The present contract was one contract for a journey to Antwerp and back. It was not important that the ticket was made up of two sheets of paper, nor that at the bottom of parts A and B (both marked "From London to Antwerp") there was printed "For airport of departure" and "For airport of destination," which words were only directions to the passenger and the officers of the company at which points the parts in question were to be detached. They had no reference to the convention and, even if they had, could not affect the question whether or not the contract was covered by it. Once the contract was found to be covered by the convention, something which for the purposes of the convention would be a misdescription in the ticket could not affect the matter. It was not important that on the ticket the space for "Agreed Stopping Places" had inserted in it "As per Company's Timetable." The question was not whether this was a contract for two carriages in some abstract sense, but whether it was a contract for two carriages for the purposes of the convention. Nothing in the convention suggested that once the parties had made a contract for a carriage with a place of departure and a place of destination, the carriage would fall outside the convention merely because the parties had expressed the contract in language suggesting that in some abstract sense there was a contract for two carriages. The matter was not affected by the fact that in the ticket two sums were inserted as fares, £4 for the outward journey, and £2 8s. for the homeward journey. This had reference to a passenger's right to a refund in certain circumstances which, whether it was part of the actual contract itself or a contemporaneous collateral agreement, could be looked at to ascertain the contractual effect of the separation of the fares. It was a convenient way of enabling the passenger's right to be carried into effect. For these reasons his lordship held that the liability was limited by the convention, but, on the assumption that he was wrong in this, expressed his view on a further point. If the contract was not one of international carriage, it was governed by the International Air Traffic Association Agreement, one of the aims of which was to lay down a contractual code to substitute a universal code for the laws of different countries. It had been argued by the plaintiffs that under the contract there was an implied duty on the carrier to take care. His lordship could not agree. By art. 18 (5) of the Agreement it was provided that "except in so far as liability is expressly provided for in these conditions of carriage, no liability whatever is accepted by the carriers . . . and . . . the passenger renounces for himself and his representatives all claims for compensation for damage in connection with the carriage . . . whatever may be the legal grounds upon which any claim concerning any such liability may be based." The express provisions referred to were set out in Art. 19. A liability was imposed on the carrier, not to exercise care in performing the contract, but to pay a sum up to a specified limit if a passenger was killed or injured during the carriage, thus eliminating all considerations of a duty to take care which might vary according to the law applicable to any individual case, a modified system of insurance being substituted, and liability in tort being excluded. Carriers who killed or injured passengers were bound to make compensation unless they could prove that they had "taken all necessary measures to avoid the damage, or that it was impossible for them to take such measures." On that view, the contract being to pay money in the event of the death of the passenger, unless certain facts were proved, it was not a breach of the contract which caused the death within the meaning of s. 1 of Lord Campbell's Act and the plaintiffs were not entitled to recover anything. But assuming there was an implied duty to take care, the plaintiffs argued that breach of it was an "act, neglect or default" within that section. The defendants argued that the "act, neglect or default" must be a tortious act and not a mere breach of contract. But "default" was a wide word, and included breach of contract. Further, though this contract excluded liability *ex delicto* and the liability was only *ex contractu*, coming into existence with the limitation of liability annexed to it, *Nunan v. Southern Railway Co.* applied so as to render the limitation under the International Air Traffic Association Agreement not binding on the representatives of a deceased passenger in an action under Lord Campbell's Act.

TALBOT, J., agreed.

COUNSEL: *Miller*, K.C., and *H. Robertson*; *Murphy*, K.C., and *C. Burt*.

SOLICITORS: *Beaumont & Son*; *Wordsworth, Marr Johnson & Shaw*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Aeolian Co. Ltd. *v.* Commissioners of Inland Revenue.

Lawrence, J. 7th May, 1936.

REVENUE—INCOME TAX—PREFERENCE SHARES—COMPANY UNABLE TO PAY DIVIDEND HAVING MADE NO PROFITS—PAYMENT AUTHORISED BY CONTROLLING COMPANY UNDER GUARANTEE—ASSESSMENT OF SUM PAID—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40)—All Schedules Rules, r. 21.

Case stated by the Commissioners for the Special Purposes of the Income Tax.

The whole of the ordinary shares and a large number of the preference shares of the appellant company were owned by an American company which, by two agreements, guaranteed payment of the dividend of 6 per cent. due on the preference shares of the English company. That company, having failed to earn the necessary profits, called on the American company

to implement its guarantee, and for the four half-years ended the 30th June and the 31st December, 1930 and 1931, the American company duly paid the dividend, which had meanwhile been raised to 7½ per cent. The American company were accordingly only legally liable for the 6 per cent. In due course, the appellant company were assessed to income tax in the sum of £14,466 for each of the years 1930–31 and 1931–32, under r. 21 of the All Schedules Rules of the Income Tax Act, 1918. The manner in which the American company implemented its guarantee was as follows: having been informed that the appellants were not in a position to pay the dividend, the American company passed a resolution in June, 1931, that the appellants should be authorised to pay the 7½ per cent. dividend from the funds in their possession, for the account of the American company. The appellants accordingly issued their dividend warrants for each of the four half-yearly payments in question, and, having paid the dividend, debited the American company with the gross amount. On appeal to the Special Commissioners against the assessments, it was contended for the company, *inter alia*, (1) that, as the appellants had not in fact received from the American company any part of the sum paid as dividends, no payment had been made by that company to the shareholders; (2) that in effect the payments were made out of capital and *ultra vires* the appellants; (3) that, alternatively, if the appellants were to be deemed to have received the sums payable by the American company, the distribution of the dividends was a payment out of profits or gains brought into charge to tax, in respect of which no assessment could be made under r. 21. It was contended for the respondents, *inter alia*, (1) that there was a payment by the American company through the appellants as its agents; (2) that the appellant company was a person by or through whom the annual payments were made. The Special Commissioners confirmed the assessments.

LAWRENCE, J., said, with regard to the appellant company's contention that it was not a person by or through whom an annual payment charged with tax under Sched. D was made, that all the facts were, in his opinion, consistent only with the notional payment by the American company of the gross sum to the appellants, with the intention that the net sum should be paid over to the shareholders of whom the American company was one, and that the appropriate amount of income tax should be deducted. As regarded that contention, therefore, r. 21 was applicable. It had also been argued for the appellants, on the authority of *Chibbett* v. *Joseph Robinson and Sons* (1924), 9 T.C. 48, at p. 61, and *Hawley* v. *Commissioners of Inland Revenue* (1925), 9 T.C. 331, that the payments under the guarantee could not be treated as profits in the hands of the shareholders for the year in which made, because they discharged a future liability to pay profits of the appellant company. In his (his lordship's) opinion, those cases were not conclusive of the present. The American company here was under a present liability antecedently created and arising from year to year. In his opinion, the sums paid were income in the hands of the shareholders. He did not think it necessary, on the view which he took of the case, to decide whether this was a foreign possession falling under Case V and not Case III of Sched. D. On that point he had been referred to *Manton* v. *Steele* (1927), 11 T.C. 549, and *Chamney* v. *Lewis* (1932), 17 T.C. 318. It had also been argued for the appellants that r. 7 was applicable exclusively to this case. He (his lordship) saw no reason for allowing the appeal on the ground that the assessment was improperly made under general r. 21. The appeal must be dismissed.

COUNSEL: *J. M. Tucker*, K.C., and *J. S. Scrimgeour*, for the appellants; *The Attorney-General* (Sir Donald Somervell, K.C.) and *Hills*, for the respondents.

SOLICITORS: *Maples, Teesdale & Co.*; *Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Lyons *v.* **Collins.**

Lawrence, J. 11th May, 1936.

REVENUE—INCOME TAX—ANNUAL VALUE OF PREMISES—DISPUTE AS TO—VALUATION BY "PERSON OF SKILL"—EXTENT TO WHICH COMMISSIONERS BOUND BY—INCOME TAX ACT, 1918 (8 & 9 Geo. 5 c. 40), s. 138, Sched. A, Rules.

Case stated by the Commissioners for the general purposes of the income tax.

Certain premises were demised by the appellant Lyons to a company called Swears & Wells, Ltd., from the 1st February, 1928, for thirty years at £2,000 a year. Before 1928, Lyons had leased the premises to a company called Alexandre Ltd. for £1,250 a year. The new lessees retained the name Alexandre Ltd., which was on the premises. At a meeting of the Commissioners held in August, 1931, the premises were assessed under Sched. A at £2,500 for the years 1927–31, and at £2,000 for the year 1931–32. A dispute as to the annual value of the premises arose, and the appellant, under s. 138 of the Income Tax Act, 1918, required the Commissioners to direct him to cause a valuation to be made by a person of skill. One, Hollis, duly valued the premises at £1,200, £1,400, £1,400, £1,400 and £1,330 respectively for the five years ended the 5th April, 1932. Hollis deposed, at an adjourned meeting in October, 1931, that his valuation was made without regard to the rent of £2,000 for the premises payable to the appellant. The appellant at the same time contended that the £2,000 was not a rack rent, and that it included a payment in respect of the lessees' use of the name "Alexandre Ltd." with the appellant's permission, and that the annual value should be determined in accordance with Hollis's valuation. The inspector of taxes contended that Hollis's valuation had proceeded on a wrong basis, as he had disregarded the provisions of the Income Tax Acts relating to annual value, and that the valuation was therefore not binding on the Commissioners. They held that the valuation was binding, and reduced the assessments. An appeal to the High Court was dismissed by Finlay, J. The Court of Appeal reversed that decision in November, 1934. In February, 1935, another valuation was accordingly made by a person of skill named Mosley, whose valuation, calculated in accordance with the rules to Sched. A to the Income Tax Act, 1918, was £1,290 for 1927-28 and £1,365 for each of the remaining years. At their next meeting the Commissioners did not question Mosley as to his valuation, but they decided that the £2,000 rent was a rack rent and that the rules required the annual value to be based on rack rent, and they made an assessment of £2,000 for each year. The question now was whether the Commissioners were bound to accept Mosley's valuation, since he had arrived at an annual value lower than the rent which they had held to be a rack rent.

LAWRENCE, J., said that, when the case had been before the Court of Appeal, the Master of the Rolls had expressed the opinion that s. 138 did not bind the Commissioners to adopt the valuation of the valuer whom they had directed to value, and had expressly disagreed with the view of s. 138 taken by Finlay, J., in the court below, and by Lord McLaren in *Stocks* v. *Sulley* (1899), 4 T.C. 98. Slesser and Romer, JJ., had not taken the same view, and the latter said that he thought, although he did not actually decide, that the Commissioners had no jurisdiction to depart from the valuer's valuation. The appeal was considered solely on the basis that Hollis had disregarded the rules in making his valuation. He (Lawrence, J.) was accordingly not bound by the opinion of the Master of the Rolls. It had been contended for the Crown that the valuer ought to be treated merely as a witness, and for that s. 138 (3) was relied on. He (his lordship) preferred the view taken by Lord McLaren, Finlay, J., and the other judges. Section 138, he thought, had obviously been designed for the purpose of finally and once and for all ascertaining the annual value, and it was not intended that the "person

of skill" should be subject to cross-examination and review by the Commissioners. The words "the annual value shall be determined in accordance with that valuation," in his opinion, indicated that the Commissioners' function was finally to adopt the valuation, apart from dishonesty or invalidity on the face of it. There was, in his opinion, no word in the section which indicated that the Commissioners were to sit as a court of appeal on the valuer's finding. With regard to the contention that the Commissioners were entitled to adopt the view that the £2,000 rent reserved by the lease was the rack rent, he (his lordship) thought that that question was a dispute as to annual value within the meaning of s. 138. On his interpretation of that section, therefore, the Commissioners could not challenge the valuer's finding on that ground. The appeal must be allowed and the case be remitted to the Commissioners with a direction that they were bound to accept Mosley's valuation.

COUNSEL: *Latter*, K.C., and *Cyril King*, for the appellant; *The Solicitor-General* (Sir Terence O'Connor, K.C.), and *R. P. Hills*, for the respondent.

SOLICITORS: *Gisborne & Co.; Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Greyhound Racing Association Ltd. *v.* Cooper (Inspector of Taxes).

Lawrence, J. 28th May, 1936.

REVENUE—INCOME TAX—LEASE OF RACING TRACK—TRACK LESSORS' ONLY CAPITAL ASSET—RENT BROUGHT IN AS TRADING RECEIPT BY LESSORS—SURRENDER OF LEASE—SUM PAID BY LESSEES IN RESPECT OF—WHETHER CAPITAL SUM—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), SCHED. D, CASE I.

Case stated by the commissioners for the special purposes of the income tax.

The appellant company was formed in 1927 to carry on the business of greyhound racing, and, in July, acquired the lease of a racing track for fourteen years. Serious losses having been incurred, a receiver for the debenture-holders was appointed in 1928. On behalf of the company, the receiver hired the track to a greyhound racing company from August, 1928, to October, 1929. In March, 1932, a new agreement was made whereby the appellant company granted the racing company a licence to use the track from May, 1932, to April, 1941, for 15 per cent. of the gross takings, with certain minimum weekly sums. Those receipts were brought in by the company as revenue receipts for purposes of income tax. In January, 1933, the appellant company bought the freehold of the track. In March, 1934, the racing company went into voluntary liquidation. On application to him, the receiver of the appellant company agreed to a surrender of their lease of the track by the racing company if a new company to be formed would take over the track at a rent to be agreed, and if a sum were paid equal to the difference between the old and the new rents, worked out on an actuarial basis at £15,640. That sum was paid to the appellant company in March, 1934, and was included as a receipt in the revenue account of the company for the year ended the 31st March, 1934. The company having been assessed to income tax under Case I of Sched. D. of the Income Tax Act, 1918, in respect of that sum, appealed to the special commissioners. It was contended on their behalf that the sum was a payment of, or in the nature of, a capital sum in respect of the diminished value of the goodwill of the company for the period 1934 to 1941, being in fact a commutation of the annual payments. It was contended for the respondent that the sum was a trading receipt assessable to income tax. The commissioners confirmed the assessment.

LAWRENCE, J., said that the question what receipts were revenue and what were capital had given rise to much difference of opinion. It was, he thought, clear that, if the sum was received for what was in truth the user of capital assets and not for their realisation, it was a revenue receipt, and not capital. It had been argued that the licence granted by the appellants to the racing company in March, 1932, was a capital asset of the appellants, and that the sum paid for the surrender of that licence was a part realisation of that capital asset, and, in support of that, *Van Den Bergh* v. *Commissioners of Income Tax* (1934), 19 T.C. 390, and *Mallett* v. *Staveley Coal Co.* [1928] 2 K.B. 405, had been relied on. In his (his lordship's) opinion, those cases were distinguishable from the present. Here, the only capital asset in fact acquired by the appellants was the track and its equipment. The user of that track, whether by the appellants or by their licensees, did not create new capital assets; nor did it realise the original capital asset, which remained the appellants' property. That £15,640 was merely a lump sum payment in place of future rents, similar to the payments in question in *Short Brothers Ltd.* v. *Commissioners of Inland Revenue* (1926), 12 T.C. 955, at p. 968, and similar cases. It had also been argued that this case was analogous to *Van den Bergh's Case, supra.* In his (his lordship's) opinion, however, the licence here was not an agreement relating to the whole structure of the appellants' business, nor was it a fundamental organisation of their activities, as was the pooling agreement in *Van den Bergh's Case, supra.* The payment of a percentage as gross receipts here was simply a means of arriving at the rent to be paid for the use of what was in fact the appellants' only capital asset. But that did not prevent the appellants from acquiring other capital assets or from carrying on its business in connection with those assets in any way it pleased. The appeal must accordingly be dismissed.

COUNSEL: *Latter*, K.C., and *Glover*, K.C., for the appellants; *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*, for the respondent.

SOLICITORS: *Blundell, Baker & Co.*, agents for *Snowball, Kyffin, Taylor & Pruddah*, Liverpool; *The Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Rhokana Corporation Ltd. *v.* Commissioners of Inland Revenue.

Lawrence, J. 28th May, 1936.

REVENUE—INCOME TAX—DEBENTURES IN ENGLISH COMPANY—INTEREST—PAYABLE AT OPTION OF HOLDER IN DOLLARS IN NEW YORK AT FIXED RATE TO £—WARRANTS CASHED IN NEW YORK—DEPRECIATION IN VALUE OF STERLING—ADDITIONAL ASSESSMENT IN RESPECT OF—VALIDITY—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), All Schedules Rules, r. 21.

Case stated by the Commissioners for the special purposes of the Income Tax.

The appellant company issued certain 7 per cent. debentures which were secured by a trust deed. That deed provided, *inter alia*, that the interest on the debentures should be paid in sterling in London or in U.S.A. dollars at a fixed rate of exchange of 4·86 dollars to the £. Equivalent provisions followed for payment in Dutch florins. The interest was to be paid by cheque or warrant on the company's bankers sent through the post, every such cheque or warrant to be payable to the order of the person to whom sent. Payment of the cheque or warrant, if purporting to be duly endorsed, was to be a satisfaction of the interest. When, in October, 1931, England went off the gold standard, with the consequent depreciation in the dollar value of the £, many of the debenture-holders exercised their option of encashing their December, 1931, dividend warrants in New York, the rate which they obtained being fixed at 4·86 dollars to the £, although the actual depreciated value of the £ was in the neighbourhood of 3·39 dollars. A substantial additional assessment for the year ended the 5th April, 1932, was made on the appellants under

r. 21 of the All Schedules Rules of the Income Tax Act, 1918. The additional assessment was computed by taking the sterling value in dollars (at the fixed rate of 4·86) of the warrants encashed in New York and re-converting them into sterling at the estimated middle rate of exchange at the 31st December, 1931, namely, 3·39. On appeal against the additional assessment, it was contended for the appellants (1) that they were assessable under r. 21 on payment of interest; (2) that the interest was paid by the posting of the interest warrants to the debenture-holders; (3) that in respect of that payment the company had already been assessed to and paid income tax; (4) that under the terms of the trust deed the appellants had the option to pay in sterling or in foreign currency. It was contended for the Crown (1) that, the warrant being paid by the company in New York in dollars, the payment was one of interest in dollars and not in sterling; (2) that, for the purposes of r. 21, that payment must be converted into sterling at the rate of exchange current at the due date of payment. The special commissioners confirmed the assessment.

LAWRENCE, J., said that it had been argued for the appellants that the interest as such was payable in sterling; that the option as to what currency it should be paid in was vested by the trust deed in the appellant company and not in the debenture-holders; that a contract to pay in foreign currency did not give rise to a debt, but was merely a contract to supply a commodity, and that, therefore, the right to be paid in dollars was not a right to the interest provided for by the debenture, but a right to delivery of a commodity, namely, dollars; that the only payment of interest was sterling, that income tax could only be deducted in sterling, and that r. 21 did not apply to foreign currency. The Attorney-General, on the other hand, had argued that the Income Tax Act generally and r. 21 in particular, did contemplate payments in foreign currency, and that conversion from foreign currency into sterling had frequently to be carried out under the Act, for instance, in computing profits of a trade; that the debenture-holder, having exercised his option, received the dollars as interest, and that the warrant, if sold, by the debenture-holder would fetch more than its sterling face value. The case was one of difficulty, but he (his lordship) thought the appellant company entitled to succeed. Since, as provided by the trust deed, payment of interest had to be made to the debenture-holder in sterling at the due date by cheque or warrant sent through the post, he (his lordship) thought that the interest was paid, and the tax had to be deducted, when the warrant was posted. When posting the warrants, the company could not tell when, where, or by whom they would be presented for encashment, or what would be the rates of exchange ruling on those days. It followed that the company could not deduct tax in the manner contended for by the respondents. If the company had the option to pay in sterling, it could clearly have discharged its obligations by paying a net sum in sterling. The company could not compel the debenture-holder to exercise his option of taking dollars before his warrant was posted. There was no provision for a deduction of income tax in suspense. Rule 21 provided for deduction on, and at the rate in force at the time of, payment, but the company could not deduct income tax calculated in dollars until it knew whether the warrant would be cashed in dollars. Rule 21, moreover, did not appear to him (his lordship) to refer to payment outside the United Kingdom, and the payment in dollars was only to be made in New York. *SS. Celia* v. *SS. Volturno* [1921] 2 A.C. 544, and *In re British American Continental Bank, Ltd.* [1922] 2 Ch. 589; [1923] 1 Ch. 276, laid down that a contract to pay in foreign currency was one to provide a commodity, and he (his lordship) was of opinion that such a commodity was not interest of money within the meaning of r. 21. The true view, he thought, was that the right to be paid in dollars was an added right which did not affect the interest on the debentures, which was payable as sterling, and r. 21 had no application to the added right.

COUNSEL: *Latter*, K.C., and *Andrewes-Uthwatt*, for the appellants; *The Attorney-General* (Sir Donald Somervell, K.C.), and *Hills*, for the respondents.

SOLICITORS: *Holmes, Son & Pott; Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

The Law Society.

ANNUAL PROVINCIAL MEETING.

The Council of The Law Society have settled the following course of procedure to be adopted at the fifty-second provincial meeting to be held on Tuesday and Wednesday, the 22nd and 23rd September, 1936, at The University College, Highfields, Nottingham (Mr. Hubert Arthur Dowson, President):—

Tuesday, 22nd September, at 10.30 a.m., at The University College, Highfields, Nottingham.—The proceedings will commence with the President's address, after which the following papers will be read: "Arbitration Actions (power to refer disputes to a Judge as Arbitrator)," Curzon Cursham (Nottingham); "Share-pushers and the Law," E. Roderick Dew, LL.B. (London); "The Statute Book—some criticisms and suggestions," A. G. Davis (Hull); "The Tithe Settlement reviewed," Robert C. Nesbitt (London); "Assents by personal representatives since 1925," David Blank (Manchester).

Wednesday, 23rd September, at 10.30 a.m., at The University College, Highfields, Nottingham.—"The work of the Council of The Law Society," Dingwall L. Bateson (London); "Courts of Referees under the Unemployment Insurance Acts," F. G. Robinson (Ilkeston); "Problems of the law of defamation in relation to the Press, literary work and broadcasting," Isidore Kerman (London).

The President may make such alteration in the order of the Papers as he may think convenient.

Societies.

Solicitors' Benevolent Association.

The Annual General Meeting of the Solicitors' Benevolent Association will be held at Nottingham at 9.45 a.m. on Wednesday, the 23rd September.

EXTINGUISHMENT OF TITHE RENT-CHARGE.

The Tithe Redemption Commission draw the attention of all persons interested in any tithe rent-charge to the provisions of s. 5 of the Tithe Act, 1936.

On the 2nd October, 1936, all tithe rent-charge will be extinguished, and in due course compensation will be made in respect of it by the issue to the proper persons of redemption stock.

Section 5 of the Act requires certain particulars in writing, and in the prescribed form, to be transmitted to the Commission on or before the 31st October, 1936, in respect of every tithe rent-charge extinguished by the Act. These particulars, so far as they relate to the title to the rent-charge and all estates and interests in or affecting it, must take the form of a statutory declaration by the person in whom the legal estate in fee simple in the rent-charge is vested, or, if the declaration is made after the 2nd October, 1936, was vested immediately before that day.

The provisions of the section call for the close and immediate attention of all persons interested in any tithe rent-charge, since *failure to transmit the required particulars* on or before the 31st October, 1936, *may result in the reduction, or total loss, of the compensation* which normally will be made in respect of the extinguishment.

Instances are known where tithe rent-charge has been leased or mortgaged, and it is of great importance that all parties concerned, whether as owners in fee simple, lessees, mortgagees or having any other estate or interest in a tithe rent-charge, should make certain that the proper declaration and particulars have been sent to the Commission.

Rules were made on the 31st July, 1936, by the Minister of Agriculture and Fisheries prescribing the forms in which these particulars must be transmitted to the Tithe Redemption Commission. These Rules, which are called The Tithe Rent-charge (Extinguishment) Rules, 1936 (S.R. & O. 1936, No. 775), may be purchased from the Stationery Office or through any bookseller; price 2d. Prints of Forms I and II referred to in the Schedule to the Rules may be obtained free of charge on application to the Tithe Redemption Commission, Eagle House, 90-96, Cannon Street, London, E.C.4.

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. JOHN KENNETH BLACKWOOD, to be the Registrar of Birkenhead County Court, District Registrar in the High Court of Justice in Birkenhead and Joint Registrar of Liverpool County Court, *vice* Mr. T. J. Benjamin promoted Senior Registrar at Liverpool in succession to Mr. E. D. Symond, retired. Mr. Blackwood was admitted a solicitor in 1908.

Mr. PETER HUTCHISON has been appointed Assistant Solicitor to East Suffolk County Council, succeeding Mr. G. A. Wheatley, resigned. Mr. Hutchison was admitted a solicitor in 1933.

Mr. G. G. H. SYMES, solicitor, has been appointed Clerk to the Borough of Weymouth Justices in succession to his father, Mr. G. P. Symes, who has retired. Mr. G. G. H. Symes was admitted a solicitor in 1921.

Professional Announcements.

(2s. per line.)

The partnership heretofore subsisting between Mr. R. A. PINSENT, Mr. ROY PINSENT, Mr. H. R. HODGKINSON, Mr. H. H. WILLIAMS and Mr. R. B. HODGKINSON, practising as solicitors under the style of Messrs. Pinsent & Co., at 6 Bennetts Hill, Birmingham, and 36, Lincoln's Inn Fields, London, W.C.2, is dissolved as from the 31st July, 1936, so far as concerns Mr. H. R. HODGKINSON, who retires from the said firm. The practice will be continued under the same name by the remaining partners, in conjunction with Mr. R. S. KING-FARLOW, M.A., LL.B. Cantab., late of the Chancery Bar, who joins the firm as on the 1st August, 1936.

OUVRY & CO.—Mr. AXEL CHRISTIAN PHARO-TOMLIN, lately a partner in the firm of Messrs. Stones, Morris & Stone, of 41 Moorgate, E.C.2, has joined the firm of Ouvry & Co., of 2 & 3, The Sanctuary, Westminster, S.W.1, as from the 15th September, 1936. The firm name of Ouvry & Co. will remain unchanged.

Notes.

The September issue of "The Keystone Magazine," which is published monthly by the Keystone Group, contains an article on the subject of Executors, Trustees and Unit Trusts, together with views on the recent Board of Trade Report.

The Kennedy Medal, founded by Judge Kennedy for the student obtaining the highest marks at the intermediate examination of the Corporation of Certified Secretaries, has been awarded to Mr. D. A. Kater, Edgware. Mr. Kater passed the examination last May with distinction in mercantile law.

Sir Kingsley Wood, the Minister of Health, addressing representatives of the county local authorities at the Shire Hall, Worcester, on the 10th September, announced that legislation would be introduced in the new Session of Parliament for the further welfare of the blind. He said he would propose to Parliament that old age pensions should be made available to blind persons at forty years of age, ten years earlier than at present, and that domiciliary provision for blind people should not be made by way of poor law relief but under the Blind Persons Act. He also indicated a number of steps that should be taken for their further benefit.

CERTIFIED ACCOUNTANTS.

The next examinations of the London Association of Certified Accountants will be held on the 1st, 2nd and 3rd December, in Belfast, Birmingham, Bristol, Cardiff, Cork, Dublin, Edinburgh, Glasgow, Hull, Leeds, Liverpool, London, Manchester, Newcastle-on-Tyne, Nottingham, Plymouth and Sheffield. Women are eligible under the Association's regulations to qualify as certified accountants upon the same terms and conditions as are applicable to men. Particulars and forms are obtainable at the offices of the Association, 50, Bedford Square, London, W.C.1.

A UNIVERSAL APPEAL

TO LAWYERS: FOR A POSTCARD OR A GUINEA FOR A MODEL FORM OF BEQUEST TO THE HOSPITAL FOR EPILEPSY AND PARALYSIS, MAIDA VALE, W.9.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 24th September, 1936.

	Div. Months.	Middle Price 16 Sep. 1936.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	115	3 9 7	2 19 10
Consols 2½%	JAJO	85	2 18 10	—
War Loan 3½% 1952 or after	JD	107¼	3 5 3	2 18 5
Funding 4% Loan 1960-90	MN	118¾	3 7 4	2 18 1
Funding 3% Loan 1959-69	AO	102¼xd	2 18 8	2 17 4
Funding 2½% Loan 1956-61	AO	92¾xd	2 13 11	2 18 2
Victory 4% Loan Av. life 23 years	MS	115	3 9 7	3 1 8
Conversion 5% Loan 1944-64	MN	119¾	4 3 6	1 18 11
Conversion 4½% Loan 1940-44	JJ	109¾	4 2 0	2 8 2
Conversion 3½% Loan 1961 or after	AO	107¼	3 5 3	3 1 7
Conversion 3% Loan 1948-53	MS	104½	2 17 5	2 10 6
Conversion 2½% Loan 1944-49	AO	101½	2 9 3	2 5 5
Local Loans 3% Stock 1912 or after	JAJO	97	3 1 10	—
Bank Stock	AO	382	3 2 10	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	88½	3 2 2	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96¾	3 2 0	—
India 4½% 1950-55	MN	117	3 16 11	3 0 0
India 3½% 1931 or after	JAJO	99¼	3 10 6	—
India 3% 1948 or after	JAJO	87⅝	3 8 4	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3 16 3	3 9 3
Sudan 4% 1974 Red. in part after 1950	MN	116	3 9 0	2 12 4
Tanganyika 4% Guaranteed 1951-71	FA	114½	3 9 10	2 14 10
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109½	4 2 2	2 12 1
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	96	2 12 1	2 15 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	110	3 12 9	3 5 8
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	104	3 12 2	3 6 9
Canada 4% 1953-58	MS	112	3 11 5	3 1 7
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	100	3 0 0	3 0 0
Nigeria 4% 1963	AO	114xd	3 10 2	3 4 4
*Queensland 3½% 1950-70	JJ	102	3 8 8	3 6 2
South Africa 3½% 1953-73	JD	108	3 4 10	2 18 0
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	98½	3 0 11	—
*Croydon 3% 1940-60	AO	99	3 0 7	3 1 2
Essex County 3½% 1952-72	JD	106½	3 5 9	2 19 8
Leeds 3% 1927 or after	JJ	95	3 3 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	106	3 6 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	80	3 2 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	96½	3 2 2	—
Manchester 3% 1941 or after	FA	97	3 1 10	—
*Metropolitan Consd. 2½% 1920-49	MJSD	100¾	2 9 7	—
Metropolitan Water Board 3% "A" 1963-2003	AO	97½	3 1 6	3 1 9
Do. do. 3% "B" 1934-2003	MS	98	3 1 3	3 1 5
Do. do. 3% "E" 1953-73	JJ	101	2 19 5	2 18 5
Middlesex County Council 4% 1952-72	MN	114	3 10 2	2 17 10
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 1 6
Nottingham 3% Irredeemable	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	108	3 4 10	3 2 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	115½	3 9 3	—
Gt. Western Rly. 4½% Debenture	JJ	125	3 12 0	—
Gt. Western Rly. 5% Debenture	JJ	136½	3 13 3	—
Gt. Western Rly. 5% Rent Charge	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	131	3 16 4	—
Gt. Western Rly. 5% Preference	MA	120½	4 3 0	—
Southern Rly. 4% Debenture	JJ	114	3 10 2	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	111½	3 11 9	3 6 8
Southern Rly. 5% Guaranteed	MA	131½	3 16 1	—
Southern Rly. 5% Preference	MA	120½	4 3 0	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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